

STATE OF WASHINGTON



**OF OFFICE OF
INSURANCE COMMISSIONER**

In the Matter of)	
)	No. D 04-117
Mutual of Enumclaw Insurance)	
Company,)	Consent Order Imposing a Fine
)	
An Authorized Insurer)	
)	

FINDINGS OF FACT

1. Mutual of Enumclaw Insurance Company is a domestic mutual insurance company authorized to transact insurance in the state of Washington in the lines of disability, property, marine transportation, vehicle, casualty, and surety insurance.
2. The Office of the Insurance Commissioner (OIC) conducted a market conduct examination of Mutual of Enumclaw for the time period January 1, 2002 through December 31, 2002. The examination included areas of advertising, agent licensing, complaints, underwriting and rating, rate and form filing, cancellations and non-renewals, and claims settlement practices. The Company passed 39 of the 43 market conduct standards tested. The previous market conduct examination took place in 1987.
3. The report on the market conduct examination of Mutual of Enumclaw was adopted by the Insurance Commissioner by Order Adopting Report of Market Conduct Examination No. G-03-106, entered December 18, 2003, which order is final.
4. RCW 48.19.040(1) requires insurers to file rates and schedule rating plans with the commissioner before using them, and RCW 48.19.040(6) requires adherence to those filings. Pursuant to WAC 284-24-100(2), schedule rating plans shall provide for no more than a twenty-five percent credit or debit. WAC 284-24-100(5) requires that such plans provide for an objective analysis, be based upon specific factual information supporting the rating, and be administered equitably and applied fairly to every eligible risk which an insurer elects to insure. Between September, 2001, and May 31, 2002 the Company recognized a need to increase premiums in most commercial lines based upon "rising costs generally in commercial lines", "sales field results", "legal climate", and "market conditions". Prior to applying for rate increases the company applied "Individual Risk Premium Modifications" (IRPMs) also referred

to as schedule debits to increase premiums. Although the schedule debits were within the twenty-five percent range of allowable charges, the policies were not evaluated on an individual risk basis in accordance with WAC 284-24-100(5).

5. The use of IRPMs as described in the foregoing finding constituted a failure of compliance and a misuse of schedule rating plans.

6. The Company identified 6,636 policy holders whose premiums were increased as a result of the Company's improper use of IRPMs, and the Company made refunds of premium overcharges (at the direction of the OIC), including interest, of approximately \$1,980,000. The interest payments were made by the company on its own initiative.

7. WAC 284-24-100 further requires that insurers retain all documents and records used in making individual risk modification determinations. Eight policies of the one hundred and forty five examined did not have supporting documentation for IRPM debited or credited.

8. RCW 48.19.040(6) prohibits an insurer from issuing insurance contracts that are not in accordance with its rate filings then in effect. Between January 1, 2000, and June 13, 2003, Mutual of Enumclaw issued 5,644 boat policies in which it failed to round off the value of the boat to the nearest \$1.00 as specified in its rate filing then in effect. Based upon a sample of 50 policies, 2% or approximately 133 of these policies were rated incorrectly resulting in some policy holders being either overcharged or undercharged by \$1.00. In addition, two personal lines policies were rated in the wrong fire protection class and two policies were not given smoke alarm credits resulting in refunds totaling \$4.00.

9. Former WAC 284-30-390 required auto insurers to value total loss claims by use of comparables or quotations in the local market rather than by using National Automobile Dealer Association average figures. Mutual of Enumclaw valued total losses in ten policies using NADA averages. After reevaluating these losses, six of the policy holders were determined to be entitled to additional payments and the company returned \$5,288 to these six policy holders.

10. When an agent appointment is revoked, RCW 48.17.160(3) requires that the insurer provide the OIC with a copy of the notice of revocation. The Company revoked the agency appointment of one non-resident agent without notifying the OIC of the revocation.

11. In December, 2002, the Company advised OIC that it had discovered rating errors on personal umbrella policies dating back to 1995 resulting from incorrect rating worksheets developed in 1995 as a result of which some umbrella policyholders with rental dwelling liability and boat owners' liability exposures had been overcharged and some had been undercharged. The company made refunds totaling \$38,985 to 393 policyholders who had been overcharged. The Company did not collect additional premium from policyholders who had been undercharged, but correctly rated such policies at the next policy renewal.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

CONCLUSIONS OF LAW

1. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license.
2. The Company committed the following violations of Washington law:
 - a. The Company's use of IRPMs to calculate rates for 6,636 commercial policies violated RCW 48.19.040 and WAC 284-24-100.
 - b. The Company's failure to retain documents and records used in making individual risk modification determinations in eight commercial policies violated WAC 284-24-100.
 - c. The Company's failure to round hull values to the nearest \$1.00 in 5,644 boat policies and its use of incorrect rating worksheets resulting in incorrect premium charges to personal umbrella policyholders with rental dwelling liability and boat owners' liability exposures violated RCW 48.19.040.
 - d. The Company's use of NADA averages to value personal automobile total loss claims in ten cases violated WAC 284-30-390.
 - e. The Company's failure to notify the OIC of the revocation of an agent's appointment violated RCW 48.17.160.

CONSENT TO ORDER

NOW, THEREFORE, Mutual of Enumclaw consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of Mutual of Enumclaw's payment of a fine, its voluntary payment of interest, and such other terms and conditions as are set forth below:

1. Mutual of Enumclaw consents to entry of the foregoing Findings of Fact and Conclusions of Law. Mutual of Enumclaw consents to the entry of this Order and waives further administrative or judicial challenge to the OIC's actions related to the subject matter of the Order.
2. Within thirty days of the entry of this Order, Mutual of Enumclaw agrees to pay to the OIC a fine in the amount of \$500,000, of which \$250,000 is suspended for a period of two years on condition that Mutual of Enumclaw shall not violate the provisions of the Washington State Insurance Code and Washington Administrative Code which are the subject of this Order and on condition that Mutual of Enumclaw carry out the provisions of, and fully comply with, the Compliance Plan set forth in Exhibit A. The Company's voluntary payment of \$173,000 in interest was considered to be an effort of good faith and was considered in determining the amount of the fine.

3. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of the Company's certificate of authority and for the recovery of the full fine, including the suspended portion.

4. Mutual of Enumclaw understands and agrees that failure to comply with the statutes and regulations which are the subject of this Order during the two-year period following entry of this Order or failure to comply with the Compliance Plan set forth in Exhibit A shall constitute grounds for recovery of the suspended portion of the fine. Failure to comply with the Compliance Plan set forth in Exhibit A shall constitute a per se violation of the laws of the State of Washington and be subject to such further enforcement as the Commissioner deems necessary in the circumstances.

EXECUTED this ____ day of _____, 2004.

MUTUAL OF ENUMCLAW
INSURANCE COMPANY

By: _____

Printed Name: _____

Printed Corporate Title: _____

ORDER OF THE INSURANCE COMMISSIONER

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. Mutual of Enumclaw Insurance Company is ordered to pay a fine in the amount of \$500,000, of which amount the sum of \$250,000 is suspended upon the condition that the Company fully comply with the laws and regulations of the State of Washington which are the subject of this Order for the next two years and upon the condition that the Company fully carry out its obligations under the Compliance Plan attached hereto as Exhibit A;

2. The Company shall comply with and carry out the Compliance Plan set forth in Exhibit A hereto, which Compliance Plan is hereby incorporated into this Order by reference as though fully set forth herein; and

3. The Company's failure to pay the fine within the time limit set forth above shall result in the revocation of the insurer's Certificate of Authority, and in the recovery of both the suspended and unsuspended amounts of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this ____ day of _____, 2004.

MIKE KREIDLER,
Insurance Commissioner

By: _____
Charles D. Brown
Staff Attorney
Legal Affairs Division

Exhibit "A"
COMPLIANCE PLAN

A. Purpose of and Consideration for the Plan

The Mutual of Enumclaw Insurance Company enters into this Compliance Plan with the Office of the Insurance Commissioner ("OIC") for the State of Washington to promote compliance by the Company with the requirements of the laws and regulations of the State of Washington. The Company is also entering into a Consent Order with OIC. This Plan is attached to the Consent Order as Exhibit "A" and is fully incorporated into said Consent Order, and the Company's obligations under this Compliance Plan are made a part of the Consent Order and constitute obligations under said Consent Order as though this Compliance Plan and the Company's obligations under it were fully set forth in said Consent Order.

B. Term of Plan

The effective date of this Plan shall be the date of entry of the Consent Order, on which date this Plan shall become final and binding. The Company's obligations under this Compliance Plan shall continue from its effective date until termination of the period during which conditions are imposed by the Consent Order suspending imposition of any portion of the fine set forth in the Consent Order.

C. Compliance Plan

1. Internal Audit

- a. Information to OIC: The Company will conduct two annual audits. Within thirty (30) days of the effective date of this Plan, the Company shall establish an annual audit plan and schedule with regard to the violations included in the Consent Order, and shall forward a written copy of the plan and schedule to Charles Brown, OIC Legal Affairs Division. Copies of each internal audit report on the two annual audits to be performed during the period of this Plan shall also be provided to OIC Legal Affairs Division within thirty days of the report being issued. Reports shall be issued no later than sixty days following the reporting period.
- b. Internal Audit Obligations: The Company shall provide its internal audit unit or division(s) with the Consent Order and shall direct its internal audit personnel to include the areas of violation in the annual internal audits conducted pursuant to this Compliance Plan.
- c. Audit Scope: Each annual audit shall encompass at least fifty (50) files for each of the violations listed in the Consent Order. If a violation is common to more than one line of business, the audit must include fifty (50) files for each line of business found to be in violation. Each file audited must involve Washington insureds or beneficiaries.

- d. Correction of Exceptions: Any exception or deficiency identified by the internal audits conducted pursuant to this Plan shall be corrected. The Company agrees to advise OIC within sixty (60) days of the audit report of any corrective measures contemplated to address any such exceptions or deficiencies or any other areas requiring correction. The OIC shall then review these measure(s) and notify the company of any comments associated thereto. Unless the OIC requests modifications to the proposed corrective measure(s), the Company shall have sixty (60) days from the end of the OIC's review period to implement the measure(s). However, should the Company need longer than sixty (60) days to correct any exception or deficiency it may contact the OIC Legal Affairs Division and request an extension to the sixty (60) day requirement.
- e. Confidentiality. The Company believes that the internal audits conducted under this Plan may provide information which is confidential and proprietary to the Company. OIC agrees to keep these internal audits confidential and not to disclose the audit reports or any information contained in the audit reports except as may be required by applicable public disclosure laws. However, in the event that OIC receives a request for disclosure of the internal audits or any information contained in the internal audits which has been identified by the Company as containing privileged, confidential, or trade secret material or information, OIC agrees that it shall withhold the documents from disclosure for at least 10 days from the date the request was received and immediately notify the Company of the nature of the request to allow the Company to take appropriate action.

D. Miscellaneous

1. Authority to Enter Plan: The Company gives express assurance that under applicable laws, regulations and where applicable, its Articles and By-Laws. The signor has the authority to bind the Company to comply fully with the terms and conditions of this Plan, and will provide written notification to the other parties within ten days of any material change to this authority or of any violation of this Plan.

MUTUAL OF ENUMCLAW INSURANCE COMPANY

BY: _____
TITLE: _____
DATE: _____